



*United States–Spain Treaties in Force,
January 1, 2009*

**Agreement between the United States of America and the
Kingdom of Spain Regarding Mutual Assistance between
their Customs Services**

**Agreement signed at Madrid July 3, 1990;
Entered into force February 28, 1993.**

TIAS 12120



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STATUS:

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AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE
KINGDOM OF SPAIN REGARDING MUTUAL ASSISTANCE BETWEEN THEIR
CUSTOMS SERVICES

TEXT:

The United States of America and the Kingdom of Spain,

Considering that offenses against customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries,

Considering the importance of assuring the accurate assessment of customs duties and other taxes,

Convinced that action against customs offenses can be made more effective by cooperation between their Customs Services,

Having regard to the Recommendation of the Customs Cooperation Council of Mutual Administrative Assistance of December 5, 1953,

HAVE AGREED AS FOLLOWS:

ARTICLE I

Definitions

For the purposes of the present Agreement,

1) "Customs laws" shall mean such laws and regulations enforced by the Customs Services concerning the importation, exportation, and transit of goods, as related to Customs duties and other taxes, or to prohibitions, restrictions and other similar controls respecting the movement of goods and other controlled items across national boundaries.

2) "Customs Administrations" shall mean in the United States of America, the United States Customs Service, Department of the Treasury, and, in the Kingdom of Spain, the Direccion General de Aduanas e Impuestos Especiales of the Ministry of Economy and Finance.



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3) "Offense" shall mean any violation of the Customs laws as well as any such attempted violation.

ARTICLE II

Scope of Assistance

1) The Parties agree to assist each other through their Customs Services, to prevent, investigate and repress any offense, in accordance with the provisions of the present Agreement.

2) Assistance, as provided in this Agreement, shall also include, upon request, all information apt to ensure the accurate assessment of customs duties and other taxes by the Customs administrations.

3) Mutual assistance as provided in paragraphs 1 and 2 shall be provided for use in all proceedings, whether judicial, administrative or investigative and shall include proceedings on classification, value and other characteristics relevant to the enforcement of the customs laws and proceedings on fines, penalties, forfeitures and liquidated damages.

4) All actions under the present Agreement by either Party will be performed in accordance with its laws.

5) This Agreement is intended to enhance and supplement mutual assistance practices presently in effect between the Parties.

ARTICLE III

Obligation to Observe Confidentiality

1) Information, documents and other communications received in the course of mutual assistance may only be used for the purposes specified in the present Agreement, including use in judicial or administrative proceedings. Such information, documents and other communications may be used for other purposes only when the supplying Party has given its express consent.

2) Inquiries, information, documents, and other communications received by either Party shall be treated as confidential, except when the supplying Party expressly states that confidential treatment is not necessary.

3) Any intelligence, documents or other information communicated or obtained under this Agreement shall be afforded in the receiving country the same protection in respect



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of confidentiality and official secrecy as applies in that country to the same kind of intelligence, documents and other information obtained in its own territory.

ARTICLE IV

Exemptions from Assistance

1) In cases where the requested Party is of the opinion that compliance with a request would infringe upon its sovereignty, security, public policy or other substantive national interest, assistance can be refused or compliance may be made subject to the satisfaction of certain conditions or requirements.

2) In cases where a request is made which the requesting Party itself would be unable to provide if requested by the other Party, the requesting Party shall draw attention to this fact in its request. Compliance with such a request shall be within the discretion of the requested Party.

ARTICLE V

Form and Substance of Requests for Assistance

1) Requests pursuant to the present Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the exigency of the situation, oral requests may also be accepted but shall be confirmed in writing.

2) Requests pursuant to paragraph 1 shall include the following information:

- (a) the authority making the requests;
- (b) the nature of the proceedings;
- (c) the object of and the reason for the request;
- (d) the names and addresses of the parties concerned in the proceedings, if known; and
- (e) a brief description of the matter under consideration and the legal elements involved.

ARTICLE VI

Channel



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- 1) Assistance shall be carried out in direct communication between officials designated by the Heads of the respective Customs Services.
- 2) In case the Customs Service of the requested Party is not the appropriate agency to comply with a request, it shall transmit the request to the appropriate agency.

ARTICLE VII

Execution of Requests

Within the scope of its jurisdiction and under its internal legislation, the Customs Service of one state, upon the express request of the Customs Service of the other state shall:

- (a) Undertake to conduct investigations and endeavor to take official and judicial measures aimed at obtaining evidence relating to a Customs offense being investigated in the requesting state and shall conduct the questioning of the subjects suspected of having committed an offense, as well as of the witnesses and experts.
- (b) Inform the Customs Service of the requesting state of the results of its investigation, as well as of any document or other piece of evidence.

ARTICLE VIII

Investigations, Files, Documents and Witnesses

- 1) Upon specific request, copies of files, documents, and other material sought by a requesting Party shall be appropriately authenticated and forwarded to the requesting Party.
- 2) At the request of the Customs Service of one state, the Customs Service of the other state may authorize its officials to, within the limitations of the authorization granted, appear as witnesses or experts in judicial, or administrative proceedings regarding the matters covered by this agreement in the jurisdiction of the other state, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matter and by virtue of what title or qualification the official will be questioned.
- 3) Upon request, the requested Party shall, where deemed appropriate, authorize officials of the requesting Administration to be present in the territory of the requested Party in connection with investigations into, or the official reporting of, a Customs offense of concern to the requesting Party.



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4) While investigating a specific customs offense, the officials specifically designated by one state may, upon this state's written request and the other state's advance authorization and in the Customs Services offices of the latter state, consult the relevant records, registers, and other documents held in said offices, and copy from them the reports or data relating to the offense. The officials referred to may take copies of the records, registers and other documents referred thereto. In the implementation of this article, all possible assistance and cooperation shall be provided to the officials of the requesting state, in order to facilitate its investigation.

5) Where deemed appropriate by both Parties, officials, of one Party shall, at the request of the other Party, participate in investigations carried out in the territory of that other Party.

ARTICLE IX

Costs

The Parties shall waive all claims for reimbursement of costs incurred in the execution of the present Agreement, with the exception of expenses for witnesses, fees of experts, and costs of interpreters other than government employees.

ARTICLE X

Special Instances of Assistance

1) Upon request, the Customs Services shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. The information shall, upon request, contain the Customs procedure used for clearing the goods.

2) The Customs Service of one Party, upon the request of the Customs Service of the other Party, shall, to the extent of its ability, exercise special surveillance of:

(a) means of transport suspected of being used in offenses within the territory of the requesting Party,

(b) goods designated by the requesting Party as the object of an extensive clandestine trade of which it is the country of destination,

(c) particular persons known or suspected by the requesting Party of being engaged in an offense.



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- 3) The Customs Services of the Parties shall, upon request, furnish each other all available information regarding activities which may result in offenses within the territory of the other Party. In serious cases which could involve substantial damage to the economy, public health, public security, or any other vital interest of the other Party, such information shall be supplied without being requested.
- 4) The Customs Services of the Parties shall, upon request, provide documentation relating to transportation and shipment of goods showing value, disposition and destination of those goods.
- 5) Upon request, the requested Party shall, subject to the laws and regulations in force in its territory, notify the persons concerned residing in its territory or have them notified by the competent authorities of any action or decision made by the requesting Party concerning any matter falling within the scope of this Agreement.

ARTICLE XI

Implementation of the Agreement

The United States Customs Service, Department of the Treasury of the United States of America and the Direccion General de Aduanas e Impuestos Especiales of the Ministry of Economy and Finance of the Kingdom of Spain may communicate directly for the purpose of dealing with matters arising out of the present Agreement which are not questions of foreign policy or international law, and after consultation shall issue any administrative directives for the implementation of the present Agreement, and shall endeavor by mutual accord to resolve problems or doubts arising from the interpretation or application of the Agreement.

ARTICLE XII

Territorial Applicability

This Agreement shall be applicable to the national territory of the United States of America and of the Kingdom of Spain.

ARTICLE XIII

Entry Into Force and Termination

- 1) This Agreement shall enter into force on the ninetieth day following the date on which the Parties notify one another by an exchange of diplomatic notes that they have accepted



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its terms, and that all necessary national legal requirements for entry into force have been fulfilled. (1)

NOTES

(1) Feb. 28, 1993.

2) The Parties agree to meet in order to review this Agreement at the end of five years counted from the date of its entry into force, unless they notify one another in writing that no review is necessary.

3) This Agreement may be terminated by written notice through diplomatic channels and shall cease to be in force six months after such notice has been given.

Done at Madrid on July 3, 1990, in duplicate, in the English and Spanish languages, both texts being equally authentic.

SIGNATORIES:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JOSEPH ZAPPALA

Ambassador of the United States of America

FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN:

FRANCISCO FERNÁNDEZ ORDÓÑEZ

Minister of Foreign Affairs